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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Trevor Reid, Crystale Reason,
Plaintiffs

v.

United States of America, and one or more
unknown named agents of the United
States, called by the fictitious names John
Doe or Jane Doe, who identities are not yet
known

Defendants

No. CV-22-00068-PHX-SMB

**DEFENDANT UNITED STATES'
RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

The United States of America, pursuant to LRCiv. 56.1(d), responds to Plaintiffs' Motion for Partial Summary Judgment ("Motion") (Doc. 39). The Motion argues that factual allegations asserted in Plaintiffs' Amended Complaint (Doc. 28) have been "admitted...and conclusively established" on the ground that the United States has not filed an answer. (Doc. 39 at p. 14).¹ The Motion should be denied. The United States filed a Partial Motion to Dismiss the Amended Complaint on November 23, 2022. *See* Doc. 33. The Partial Motion to Dismiss the Amended Complaint is fully briefed. *See* Docs. 36, 38.

¹ Plaintiffs' Statement of Facts in Support of Motion for Partial Summary Judgment (Doc. 40) merely parrots and cites most allegations in Plaintiffs' Amended Complaint. Plaintiffs' Statement of Facts does not comply with the mandates of LRCiv. 56.1(a).

1 Fed. R. Civ. P. 12(a)(4) governs the deadline for the United States' answer to the Amended
2 Complaint.

3 The filing of the Partial Motion to Dismiss the Amended Complaint tolled the filing
4 of the Government's Answer. *See ThermoLife Int'l, LLC v. Gaspari Nutrition, Inc.*, No.
5 CV 11-01056-PHX-NVW, 2011 WL 6296833, at *5 (D. Ariz. Dec. 16, 2011) ("...the
6 majority of courts have expressly held that even though a pending motion to dismiss may
7 only address some of the claims alleged, the motion to dismiss tolls the time to respond to
8 all claims."). "Courts following this majority rule have noted that the minority approach
9 would require duplicative sets of pleadings in the event that the Rule 12(b) motion is denied
10 and cause confusion over the proper scope of discovery during the motion's pendency."
11 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1346 (April
12 2022 update). *See also Gamble v. Boyd Gaming Corp.*, No. 2:13-cv-01009-JCM-PAL,
13 2014 WL 1331034, at *3 (D. Nev. Apr. 1, 2014) (collecting cases and "agree[ing] with the
14 majority of courts interpreting [Fed.] Rule [Civ. P.] 12(a)(4)."); *Dillingham v. Garcia*, No.
15 1:18-cv-00579-LJO-EPG-PC, 2019 WL 6618055, at *8 (E.D. Cal. Dec. 5, 2019) (same),
16 report and recommendation adopted, 2020 WL 2520639 (E.D. Cal. May 18, 2020); and
17 *Godlewski v. Affiliated Computer Services, Inc.*, 210 F.R.D. 571, 572 (E.D. Va. 2002) (the
18 minority approach requiring defendant to answer in "piecemeal fashion" is
19 "unnecessarily formalistic at the expense of sound policy and judicial economy.").

20 The United States respectfully requests that Plaintiffs' Motion for Partial Summary
21 Judgment be denied for the foregoing reasons.

22
23 RESPECTFULLY SUBMITTED this 9th day of March, 2023.

24
25 GARY M. RESTAINO
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26
27 s/Noel C. Capps
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, I electronically transmitted the attached document via electronic mail to the below emails and to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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